



State of California  
Franchise Tax Board



# Real Estate Withholding Guidelines

**For additional information, contact the Withholding Services and Compliance Section**



**Telephone:** (888) 792-4900 (U.S. toll-free call)  
(916) 845-4900 (not a toll-free call)

If you need additional information, please call us. Our automated telephone system allows you to access important information seven days a week, 24 hours a day. If the system does not completely answer your questions, you may speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m.

**Assistance for persons with disabilities:** We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD (800) 822-6268.

**Asistencia Telefonica y en el Internet**

Dentro de los Estados Unidos, llame al ..... (800) 852-5711

Fuera de los Estados Unidos, llame al (cargos aplican) ..... (916) 845-6500

Sitio en el Internet: [www.ftb.ca.gov](http://www.ftb.ca.gov)

**Asistencia para personas discapacitadas:** Nosotros estamos en conformidad con el Acta de Americanos Discapacitados. Personas con problemas auditivos pueden llamar al TTY/TDD (800) 822-6268.



**Internet Address:** [www.ftb.ca.gov](http://www.ftb.ca.gov)  
**Email Address:** [WSCS.GEN@FTB.CA.GOV](mailto:WSCS.GEN@FTB.CA.GOV)  
(for non-confidential email)



**FAX:** (916) 845-9512



**Mailing Address:** WITHHOLDING SERVICES AND  
(correspondence or COMPLIANCE SECTION  
waiver requests) FRANCHISE TAX BOARD  
PO BOX 651  
SACRAMENTO CA 95812-0651



**Mailing Address:** FRANCHISE TAX BOARD  
(for remitting PO BOX 942867  
withholding) SACRAMENTO CA 94267-0001



**Forms-by-FAX:** (800) 998-3676

You can receive forms via fax seven days a week, 24 hours a day. The following real estate forms are available:

Form 593	Real Estate Withholding Remittance Statement
Form 593B	Real Estate Withholding Tax Statement
Form 593-C	Real Estate Withholding Certificate for Individual Sellers
Form 593-L	Real Estate Withholding – Computation of Estimated Gain or Loss
Form 593-I	Real Estate Withholding Installment Sale Agreement
Form 593-W	Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers

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## Purpose

This publication provides guidance on the withholding requirements for sales of California real property closing on or after January 1, 2004.

## Form Changes for Sales Closing on or After January 1, 2004

### New Forms

We replaced **Form 597, Real Estate Withholding Tax Statement**, with **Form 593** and **Form 593-B**:

**Form 593, Real Estate Withholding Remittance Statement.** Use this form to report and remit the total real estate withholding for the month and to pay any interest assessed on late withholding payments for 2004. This form is also the transmittal for Form 593-B, *Real Estate Withholding Tax Statement*. You should now remit withholding monthly for all escrows that closed during the calendar month.

**Form 593-B, Real Estate Withholding Tax Statement.** Use this form to report the real estate withholding for each seller.

### Significant Form Updates

**Form 593-C, Real Estate Withholding Certificate for Individual Sellers.** We deleted language that pertains to the exemption for sales of \$100,000 or less. Such sales are automatically exempt from withholding, and the law does not require certification to the exemption.

**Form 593-W, Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers.** We deleted language pertaining to exemptions for sales of \$100,000 or less, and sales by a bank or a bank acting as a fiduciary for a trust. Such sales are automatically exempt from withholding, and the law does not require certification for the exemptions.

**Use forms with pre-printed year 2004 for escrows closing on or after January 1, 2004.** Go to our Website, [www.ftb.ca.gov](http://www.ftb.ca.gov), to get current forms and real estate information.

## Questions and Answers

### Part I. General Information

#### 1. What is real estate withholding?

Real estate withholding is a prepayment of California state income tax for sellers of California real property (similar to wage withholding).

#### 2. Is real estate withholding an additional tax on the sale of California real property?

No. Real estate withholding is not an additional tax on the sale of real estate. It is a prepayment of the income (or franchise) tax due on the gain from the sale of California real property.

#### 3. What is the withholding rate?

The withholding rate is  $3\frac{1}{3}$  percent of the total sales price.

#### 4. When is withholding required?

Withholding is required on sales or transfers of California real property when the total sales price exceeds \$100,000 and any of the following are true:

- The seller is an individual.
- The seller is a non-individual, other than a partnership, with a last known street address outside California.
- The disbursement instructions authorize proceeds to be sent to a financial intermediary of the seller.
- The seller is a corporation with no permanent place of business in California immediately after the sale.

**Note:** Sellers meeting the above criteria may still qualify for an exemption or reduced withholding (see *Parts III and IV*).

#### 5. When is withholding not required?

Withholding is not required when any of the following are true:

- The total sales price does not exceed \$100,000.
- The seller is a bank or bank acting as a fiduciary for a trust.
- The property is being foreclosed upon.
- The seller meets an exemption on Form 593-C or Form 593-W.
- FTB has granted a waiver to a non-individual seller.

#### 6. What is a “buyer”?

We use the term *buyer* throughout this publication to refer to the buyer or any other transferee of the property.

#### 7. What is a “seller”?

We use the term *seller* throughout this publication to refer to the seller or any other transferor of the property.

#### 8. Who are “individual sellers”?

Individual sellers include all of the following:

- Sellers or transferors who are human beings (as opposed to entities such as corporations, partnerships, estates, trusts, etc.).
- Husbands and wives who are on title together.
- Sellers who hold property in the name of a revocable trust whose grantors are individuals. We do not recognize revocable trusts for tax purposes.

**9. Who are “non-individual sellers”?**

Non-individual sellers include all sellers or transferors who are any type of entity (other than individuals) such as corporations, estates, partnerships, irrevocable trusts, etc. For information on revocable trusts, please see question 8, “Who are ‘individual sellers’?”

**10. Does the law require withholding on the sale of multiple parcels when the total sales price of all properties exceeds \$100,000 but the sales price of each separate parcel is under \$100,000?**

Yes. Sales of multiple parcels within the same escrow constitute one transaction for determining the withholding requirements.

**11. Does California require withholding on personal property sold with real property?**

Yes. California requires withholding on the total sales price, unless the personal property is stated separately in the sales contract.

**12. When a tax lien is recorded on the property, which is paid first, the tax lien or the withholding?**

Use the proceeds in the escrow account to first pay the required withholding before applying the proceeds to an existing lien (including IRS liens). If there are not enough proceeds to pay off an IRS lien and the withholding, the parties can arrange to pay the withholding outside of escrow.

**13. How can I get withholding forms and publications?**

To get withholding forms and publications (including additional copies of Pub. 1016), contact us:

**At our Website:** [www.ftb.ca.gov](http://www.ftb.ca.gov)

**By telephone:** (888) 792-4900 (toll-free)  
(916) 845-4900

**At Forms-by-Fax:** (800) 998-3676.

**14. Can sellers whose withholding payment is more than their tax liability receive an early refund from the Franchise Tax Board?**

No. The law does not provide for early refunds of taxes withheld on sales of real estate. You must claim the amount withheld on your California tax return after the end of the taxable year.

**15. Does withholding relieve sellers from the requirement to file California tax returns?**

No. Sellers must file California tax returns if they meet the filing requirements. If withholding is more than the actual tax liability, we will refund the overpayment. If withholding is less than the actual tax liability, additional tax will be due.

**16. If sellers are exempt from withholding, are they still required to file California tax returns?**

Yes. Sellers must file California tax returns if they meet the filing requirements.

**17. How can sellers determine if the Franchise Tax Board requires them to file California tax returns?**

Usually, California real property sellers must file a California tax return. For more information on

California filing requirements, or to order tax forms, call the numbers listed below:

From within the United States . . . . . (800) 852-5711

From outside the United States . . . . . (916) 845-6500  
(not toll-free)

For hearing impaired with TDD . . . . . (800) 822-6268

Tax forms and information are available on our Website:

[www.ftb.ca.gov](http://www.ftb.ca.gov)

## **Part II. Withholding Agent**

**18. Who must withhold?**

Although the law requires buyers to withhold, they can request the escrow person to do the withholding. We use the term *withholding agent* throughout this publication to refer either to the escrow person or the buyer, whoever is taking responsibility for withholding.

**19. What is the escrow company required to do?**

It is the escrow company's responsibility to give written notice of the withholding requirements to the buyers. Once the escrow company notifies buyers, it is their responsibility to withhold. However, buyers normally delegate the responsibility to the escrow company.

The escrow company should:

- Give Form 593-C, with instructions, to individual sellers.
- Give Form 593-W, with instructions, to non-individual sellers.
- Withhold when required.
- Complete Forms 593 and 593-B when withholding is required.
- Give Copies B & C of Form 593-B to the sellers.
- Send Copy A of Form 593-B to Franchise Tax Board with Form 593 and the withholding payment.

See *Part V, Reporting and Remitting Withholding*, for more information.

**20. Are withholding agents responsible for verifying sellers' certifications on Form 593-C and Form 593-W?**

Withholding agents should only verify certifications to the extent that they have knowledge of the facts. If they have no knowledge of the facts, then they must only verify that the certificate is complete and signed. Withholding agents should not rely upon an unsigned certificate. Examples:

1. An individual seller completes Form 593-L, *Real Estate Withholding – Computation of Estimated Gain or Loss*, and certifies a loss on the transaction. We do not require the withholding agent to verify the amounts shown on Form 593-L.
2. An individual seller completes Form 593-C, *Real Estate Withholding Certificate for Individual Sellers*, and certifies that the sale is an installment sale. However, the buyer has not provided a completed and signed Form 593-I,

*Real Estate Withholding Installment Sale Agreement.* The withholding agent should not accept the exemption certificate and should withhold.

3. A seller completes Form 593-W, *Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers*, and certifies that a partnership is selling the property, but the withholding agent knows that the recorded title is not in the name of the partnership. The withholding agent should not accept the exemption certificate and should withhold.

## **21. How must escrow companies notify buyers of the withholding requirements?**

The real estate escrow person must provide written notification to the buyer or other transferee unless the transferee is an intermediary or accommodator in a deferred exchange. The written notification must be in substantially the same language as follows:

*In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to 3<sup>1</sup>/<sub>3</sub> percent of the sales price in the case of a disposition of California real property interest by either:*

1. *A seller who is an individual or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR*
2. *A corporate seller that has no permanent place of business in California.*

*The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).*

*However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:*

1. *The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR*
2. *The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation with a permanent place of business in California, OR*
3. *The seller, who is an individual, executes a written certificate, under the penalty of perjury, of any of the following:*
  - A. *That the California real property being conveyed is the seller's principal residence (within the meaning of Section 121 of the Internal Revenue Code).*
  - B. *That the California real property being conveyed is or will be exchanged for property of like kind (within the meaning of Section 1031 of the Internal Revenue Code), but only to the extent of the amount of gain not required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.*

*C. That the California real property has been compulsorily or involuntarily converted (within the meaning of Section 1033 of the Internal Revenue Code) and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.*

*D. That the California real property transaction will result in a loss for California income tax purposes.*

*The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.*

*The California statutes referenced above include provisions that authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis for corporations or other entities.*

## **22. When a transfer is done without an escrow, who must notify buyers of the withholding requirements?**

The person responsible for closing the transaction (attorney, title company, etc.) must notify buyers of the withholding requirements. If no one is responsible for closing the transaction, then the person who receives and disburses the funds for the property sold is responsible to notify the buyers.

## **23. What is the penalty for not properly notifying buyers?**

The penalty is the greater of \$500 or 10 percent of the required withholding.

## **24. What is the penalty for not withholding?**

The penalty for not withholding is the greater of \$500 or 10 percent of the required withholding.

## **25. Can Franchise Tax Board withdraw the penalty for not withholding?**

Yes. If the failure to withhold was due to reasonable cause, the Franchise Tax Board will withdraw the penalty.

## **26. What is "reasonable cause"?**

"Reasonable cause" is a standard exception to most penalties under the California Revenue and Taxation Code and the Internal Revenue Code.

Generally, reasonable cause exists where noncompliance occurs despite the exercise of ordinary business care and prudence.

## **27. Can the escrow company charge a fee for withholding?**

Yes. The escrow company may charge no more than \$45 for providing assistance in complying with the withholding requirements.

"Assistance" includes, but is not limited to:

- Helping the parties clarify withholding requirements with Franchise Tax Board.

- 
- Helping non-individual sellers request reduced withholding or waivers.
  - Withholding and remitting the payment to Franchise Tax Board.

“Assistance” does not include:

- Providing written notification of the withholding requirements to buyers.
- Providing exemption or waiver forms to sellers.

**28. Who pays the escrow fee for withholding?**

The fee is negotiable. Either buyers or sellers may pay the escrow withholding fee.

**29. Does withholding relieve the escrow person from the Form 1099-S reporting requirements?**

No. The regular Form 1099-S requirements continue to apply.

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## Part III. Sales by Individuals

### Exemptions

#### 30. What are the withholding exemptions for individual sellers?

Individual sellers are exempt from withholding if the:

- Property qualifies as their principal residence per Internal Revenue Code (IRC) Section 121.
- Sale will result in a loss or zero gain for California tax purposes.
- Transaction will qualify as a like-kind exchange, with the exception of boot (IRC Section 1031).
- Transaction will qualify as an involuntary conversion (IRC Section 1033).
- Transaction will qualify for nonrecognition treatment under IRC Section 351 (transfer to a corporation controlled by the transferor) or IRC Section 721 (contribution to a partnership in exchange for a partnership interest).

Sellers meeting one of the above exemptions must sign a written certification (Form 593-C) under penalty of perjury to be exempt from withholding.

#### 31. What form do individual sellers use to certify that they qualify for an exemption?

Individual sellers must use California Form 593-C, *Real Estate Withholding Certificate for Individual Sellers*, to certify that they qualify for one of the exemptions. Sellers must give a completed and signed form to the withholding agent by the close of escrow or withholding will be required. The withholding agent will be relieved of the withholding requirements if they rely in good faith on a completed and signed Form 593-C that certifies an exemption.

#### 32. Does the law always require withholding when sellers do not qualify for any of the exemptions?

Unless the sale qualifies for an automatic exemption (total sales price is \$100,000 or less or the transferee is acquiring the property as part of a foreclosure) withholding is required when sellers do not qualify for any of the exemptions. To be excluded as part of a foreclosure, the transferee must be:

- a) A beneficiary under a mortgage or deed of trust, and
- b) Acquiring the California real property in a judicial or a nonjudicial foreclosure or by a deed of foreclosure.

#### 33. Once sellers complete and sign Form 593-C, should the Form 593-C be sent to the Franchise Tax Board for review/approval?

No. The withholding exemption certificate (Form 593-C) should not be sent to FTB unless requested by the FTB. The escrow company must keep this form in their files for five years following the close of the transaction.

#### 34. What is the penalty for completing a false certification?

If the seller knowingly executes a false exemption certificate, the penalty is the greater of \$1,000 or 20 percent of the required withholding.

#### 35. Can individual sellers request a waiver?

No. There is no waiver process for individuals. The certification process has replaced the waiver process. Individuals can get Form 593-C, *Real Estate Withholding Exemption Certificate for Individual Sellers*, to certify that they qualify for an exemption.

#### 36. Can individual sellers who will have a small gain or a lower tax liability apply for reduced withholding?

No. There is no provision in the law that allows reduced withholding for individual sellers. The withholding agent must withhold the full 3<sup>1</sup>/<sub>3</sub> percent of the total sales price, even when the sale will only result in a small gain.

### Principal Residence

#### 37. Does the law require withholding on the sale of a principal residence?

There is no withholding if sellers certify on Form 593-C that the property qualifies as their principal residence under IRC Section 121.

#### 38. What qualifies as a principal residence under IRC Section 121?

Generally, a home will qualify as a principal residence if, during the five-year period ending on the date of the sale, the sellers have owned and lived in the property as their main home for at least 2 years. There may be other restrictions, limitations, or exceptions. For more details, get IRS Publication 523, *Selling Your Home*, by accessing the Internal Revenue Service Website, [www.irs.gov](http://www.irs.gov), or by calling the IRS at (800) 829-3676.

#### 39. Can sellers certify that the property was their principal residence even though they are not living in it at the close of escrow?

Even though the sellers do not currently live in the property, it may still qualify as their principal residence. If the sellers have owned and lived in the property as their main home for at least two of the past five years, then they meet the requirement. The two years can be any two years during the five-year period.

For example, the sellers retired 2½ years ago and moved from their city home of 20 years to a home on the coast. For the past 2½ years, they have been renting the city home and now are selling it. Since the sellers have owned and lived in the home as their main home for at least two of the last five years, they may certify the city home was their principal residence.



**40. Can sellers claim the property as their principal residence if they have not owned or lived in the property for 2 years?**

There are exceptions to the two-year rule if the primary reason they are selling the home is for a change in the place of employment, health, or unforeseen circumstances such as death, divorce, or loss of job, etc. For more information about what qualifies as a principal residence or exceptions to the two-year rule, get IRS Publication 523, *Selling Your Home*, by accessing the IRS Website, **www.irs.gov**, or by calling the IRS at (800) 829-3676.

**41. What types of property qualify as a principal residence?**

A mobile home, houseboat, cooperative apartment, or condominium can be a principal residence. Usually, the place where the seller lives is the principal residence. If the seller owns more than one home, the principal residence is the home lived in most of the time.

**42. What types of property do not qualify as principal residences?**

Generally, the following types of property do not qualify as principal residences:

- Rental property.
- Vacant land.
- Vacation home or second home.

However, property that has been rented or used as a vacation home may still qualify as a principal residence if the seller meets the criteria under IRC Section 121.

**43. Does the law require withholding when the property is a multiple family unit (duplex, triplex, etc.) and the sellers lived in one of the units as their principal residence?**

Yes. However, the law only requires withholding on the portion of the sales price that is not for the principal residence. The sales price should be allocated between the principal residence and the remainder of the units using the same method that the seller used to determine depreciation.

Withholding is still required when the total sales price of all the units exceeds \$100,000, even if the portion of the sales price related to the non-principal residence does not exceed \$100,000.

**44. When does the law require withholding on the sale of a mobile home?**

The law requires withholding if the mobile home was not the seller's principal residence and the mobile home is permanently affixed to a foundation or is subject to real property taxes. The law also requires withholding on the land sold with the mobile home.

## **Loss or Zero Gain**

**45. What is "a loss or zero gain for California income tax purposes"?**

A loss or zero gain for California income tax purposes means that sellers will report a loss or zero gain on the sale on their California income tax

return. There is a loss or zero gain on the sale when the adjusted basis is more than or equal to the selling price (less selling expenses).

It is not a loss or zero gain just because there are no proceeds from the sale or because the property is selling for less than what it is worth.

**46. How do sellers determine if they will have a loss or zero gain on the sale?**

If sellers believe they may have a loss or zero gain on the sale, they must complete Form 593-L, *Real Estate Withholding – Computation of Estimated Gain or Loss*. Sellers can only certify that they will have a loss or zero gain on the sale if they have completed Form 593-L and have a loss or zero gain on Line 16.

**47. Can sellers use suspended passive activity losses or other losses to compute the loss or zero gain on the sale?**

Sellers may only use passive activity losses that directly relate to the property being sold. They may not use losses that are not directly related to this property (e.g., capital loss carryforwards, stock losses, passive activity losses from other properties).

**48. Who is responsible for completing Form 593-L?**

The seller is responsible for completing Form 593-L.

**49. Once sellers certify that they have a loss or zero gain, should the Form 593-L be sent to the Franchise Tax Board for review/approval?**

No. Form 593-L should not be sent to FTB unless requested by the FTB. Usually sellers retain Form 593-L and should keep it for five years following the close of the transaction. If sellers give Form 593-L to the escrow company, the escrow company should retain it for five years.

## **Involuntary Conversions**

**50. Does the law require withholding when the sale is the result of an involuntary transfer such as a condemnation?**

Withholding is not required when sellers certify on Form 593-C that the transfer is the result of an involuntary transfer as defined under IRC Section 1033 and that they intend to replace the property with qualified property.

**51. What is an "involuntary conversion"?**

An involuntary conversion occurs when property is destroyed, condemned, or disposed of under the threat of condemnation and other property or money is received in payment. For example, the government informs the seller that it intends to acquire the seller's property for public use.

To qualify for the withholding exemption, the seller must also intend to replace the property with qualified property. In general, the replacement property must be similar or related in service or use to the converted property. Get IRS Publication 544, *Sales and Other Dispositions of Assets*, for information about involuntary conversions.

## Contributed Capital

### 52. Does the Franchise Tax Board require withholding when the property is transferred to a corporation or contributed to a partnership?

Withholding is not required when transferors certify on Form 593-C that the transfer qualifies for nonrecognition treatment under IRC Section 351 (property is being transferred to a corporation controlled by transferor) or IRC Section 721 (property is being contributed to a partnership in exchange for a partnership interest).

## IRC Section 1031 Exchanges

### 53. Does the law require withholding when the sale is part of a like-kind exchange as defined under IRC Section 1031?

Withholding is not required on the initial transfer if the seller certifies on Form 593-C that:

1. The transaction will qualify as a simultaneous like-kind exchange. However, if the seller receives any proceeds (boot) from the sale, the withholding agent must withhold  $3\frac{1}{3}$  percent of that amount. Or,
2. The transaction will qualify as a deferred like-kind exchange. However, if the seller receives any proceeds (boot) from the sale, the withholding agent must withhold  $3\frac{1}{3}$  percent of that amount.

The intermediary or accommodator must withhold  $3\frac{1}{3}$  percent of the total sales price if the exchange does not occur or does not meet the requirements of IRC Section 1031.

### 54. Is there a minimum amount of boot (cash or cash equivalent) the seller must receive before the law requires withholding on the boot?

There is no minimum boot amount that the seller must receive before the law requires withholding on the boot.

### 55. Does the intermediary or accommodator need to certify that they will withhold?

No. The law requires the intermediary or accommodator to withhold on any boot or if the exchange does not occur.

## Installment Sales

### 56. Must the withholding agent withhold the full $3\frac{1}{3}$ percent of the total sales price on installment sales?

They must withhold the full  $3\frac{1}{3}$  percent of the total sales price when escrow closes unless the buyer agrees to withhold  $3\frac{1}{3}$  percent of each installment principal payment. To withhold on each principal payment, the buyer must complete and sign Form 593-I, *Real Estate Withholding Installment Sale Agreement*. The buyer must give this form to the escrow company. The escrow company will then withhold only  $3\frac{1}{3}$  percent of the down payment and attach Form 593-I to Form 593-B when the withholding on the down payment is sent to FTB.

### 57. What if the seller wants the withholding on each installment payment, but the buyer does not?

If the buyer does not want to withhold on each installment payment,  $3\frac{1}{3}$  percent of the total sales price must be withheld at the time of the sale. Only the buyer can elect to withhold from each installment payment. The election is irrevocable and must be in writing.

## Multiple Sellers

### 58. How is withholding calculated when there are multiple sellers?

The withholding is calculated by applying the withholding rate to each seller's proportion of the total sales price.

#### Example:

Total sales price            \$200,000

Sellers' ownership percentages:

A = 20%, B = 30%, C = 50%

Withholding per seller:

A  $\$200,000 \times 20\% \times .0333 = \$1,332$

B  $200,000 \times 30\% \times .0333 = 1,998$

C  $200,000 \times 50\% \times .0333 = 3,330$

### 59. Does the Franchise Tax Board require withholding when sellers are on title for incidental purposes?

If the incidental sellers have no financial ownership, then their ownership percentage is zero and there is no withholding on them.

Examples of sellers who are on title for incidental purposes are:

- Co-signors on title (e.g., parents co-signed to help their child qualify for the loan).
- Family members on title to receive property upon the owner's death.

## Revocable Trusts

### 60. What is a revocable trust?

A revocable (or grantor) trust is a trust where the grantor (person who transferred the property into the trust) retains the right to cancel or revoke the trust. For tax purposes, a revocable trust is not a separate entity. A revocable trust is transparent for tax purposes and the grantor must report the sale and claim the withholding on its individual tax return.

### 61. When a trust holds title to the property, who is considered the seller?

If the trust is revocable, then the seller is the grantor. Usually the grantor of a revocable trust is an individual and falls under the requirements for individuals.

If the trust is irrevocable, then the seller is the trust and falls under the requirements for non-individuals. See *Part IV* for withholding on irrevocable trusts.

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**62. Does the law require withholding on sales by revocable trusts?**

Yes. Withholding is required unless the grantor qualifies for an exemption on Form 593-C, *Real Estate Withholding Exemption Certificate for Individual Sellers*.

**63. Does the law require withholding on sales by family trusts or living trusts?**

Typically, family trusts and living trusts are revocable trusts and the sellers are the grantors. Therefore, withholding is required unless the grantors qualify for an exemption on Form 593-C, *Real Estate Withholding Exemption Certificate for Individual Sellers*.

### **Sales To Relocation Companies**

**64. What are the withholding rules when the transferor sells property to a relocation company?**

Sales involving relocation companies are subject to the same rules as other sales. There is no withholding on the sale if the relocating sellers certify that the property was their principal residence, or qualify for any other exemption. Otherwise, withholding is required.

### **Short Sales / Cash-Poor Transactions**

**65. Does the law require withholding in a cash-poor transaction?**

Yes. The fact that a transaction is cash-poor is not an exemption to withholding. The parties must arrange to pay the withholding.

## Part IV. Sales by Non-individuals

### Exemptions

#### 66. What are the exemptions for non-individual sellers?

Non-individual sellers are exempt from withholding when title to the property is recorded in the name of:

- A corporation with a permanent place of business in California.
- A partnership.
- An LLC classified as a partnership for federal and California income tax purposes, which is not a single member LLC that is disregarded for federal and California income tax purposes.
- A tax-exempt entity.
- An insurance company, IRA, qualified pension plan, or Charitable Remainder Trust.
- An irrevocable trust with a California trustee.
- An estate with a California decedent.

Sellers meeting one of the above exemptions must sign Form 593-W to certify under penalty of perjury that they are exempt from withholding.

#### 67. What form do non-individual sellers use to certify that they qualify for an exemption?

Non-individual sellers must use Form 593-W, *Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers*, to certify that they qualify for one of the exemptions. They must give a completed and signed form to the withholding agent by the close of escrow or withholding will be required. Withholding agents will be relieved of the withholding requirements if they rely in good faith on a completed and signed Form 593-W that certifies an exemption.

#### 68. Once sellers certify that they qualify for a withholding exemption, should the Form 593-W be sent to the Franchise Tax Board for review/approval?

No. The withholding exemption certificate (Form 593-W, Part II) should not be sent to FTB unless requested by the FTB. The escrow office must keep this form in their files for five years following the close of the transaction.

#### 69. What is the penalty for filing a false certification?

If the seller knowingly executes a false exemption certificate, the penalty is the greater of \$1,000 or 20 percent of the required withholding.

#### 70. Does the law always require withholding when sellers do not qualify for any of the exemptions?

No. Sellers may request a waiver or reduced withholding. See questions 86-99, for more information.

### Corporations

#### 71. Does the law require withholding when a corporation sells California real property?

Yes. Withholding is required unless the corporation certifies on Form 593-W, *Part II – Certifications that fully exempt the sale from withholding*, that it will

continue to have a permanent place of business in California after the sale.

#### 72. When does a corporation have a permanent place of business in California?

Corporations have a permanent place of business in California if they meet one of the following conditions:

- Incorporated in California.
- Qualified to transact business in California through the Secretary of State.
- Will still maintain a permanent office in California permanently staffed by its employees after the sale.

### Partnerships

#### 73. Does the law require withholding when a partnership sells California real property?

No. Withholding is not required if title to the property is recorded in the name of a partnership. However, partnerships are required to withhold on nonresident partners. Get FTB Pub. 1017, *Nonresident Withholding Partnership Guidelines*, for more information.

### Limited Liability Companies (LLCs)

#### 74. Does the law require withholding when a single member limited liability company is the seller?

If the single member LLC is classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes. See questions 71 and 72 for withholding on corporations.

If the LLC is a single member LLC that has chosen to be disregarded for federal and California income tax purposes, then that single member is considered the seller and title to the property is considered to be in the name of the single member for withholding purposes.

- If the single member is an individual, rules for individuals apply (see Part III, Sales by Individuals).
- If the single member is a corporation, rules for corporations apply (see questions 71 and 72).
- If the single member is a partnership, rules for partnerships apply (see question 73).
- If the single member is an LLC, rules for LLCs apply to the single member (see questions 74 and 75).

#### 75. Does the law require withholding when a multiple member limited liability company is the seller?

If a multiple member LLC elected to be classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes. See questions 71 and 72 for withholding on corporations.

If a multiple member LLC elected to be classified as a partnership for federal and California income tax purposes, then the seller is considered a partnership for withholding purposes. See question 73 for withholding on partnerships.

## Tax-Exempt Entities

### 76. Does the Franchise Tax Board require withholding when a tax-exempt entity is the seller?

Withholding is not required when the seller certifies on *Form 593-W, Part II - Certifications that fully exempt the sale from withholding*, that it is exempt from withholding because it is exempt from tax under either California or federal law (e.g., religious, charitable, educational, not for profit organizations, etc.).

### 77. Does the Franchise Tax Board require withholding when other state, federal or local government agencies, or the Resolution Trust Corporation sell the property?

FTB does not require withholding when other state, federal or local government agencies, or the Resolution Trust Corporation are the sellers.

## Irrevocable Trusts

### 78. What is an irrevocable trust?

An irrevocable trust is one that is bound by the conditions set forth in the trust instrument and cannot be terminated by the creator (or trustor) once created.

### 79. When a trust holds title to the property, who is considered the seller?

If the trust is irrevocable, then the seller is the trust and falls under the requirements for non-individuals.

If the trust is revocable, then the seller is the grantor. Usually, the grantor of a revocable trust is an individual and falls under the requirements for individuals. See *Part III, Sales by Individuals*.

### 80. Is withholding required on sales by irrevocable trusts?

Yes. Withholding is required on irrevocable trusts unless at least one trustee is a California resident. A successor trustee that is a California resident does not exempt the trust from withholding unless the successor trustee has moved to a position of current responsible trustee.

Even if an irrevocable trust is exempt from withholding, the trust must withhold on distributions of California source income to nonresident beneficiaries. Get FTB Pub. 1023, *Nonresident Withholding – Independent Contractor Rent & Royalty Guidelines*, for more information.

## Real Estate Investment Trusts (REIT)

### 81. Does the Franchise Tax Board require withholding when a Real Estate Investment Trust sells the property?

Withholding is not required as long as the REIT has a permanent place of business in California. (See Question 72).

## Bankruptcy Trusts and Estates

### 82. Does the Franchise Tax Board require withholding when a bankruptcy trust or estate sells the property?

Yes. However, if the bankruptcy trustee is a California resident, the trustee may certify "Yes" to Question 5, Part II, on Form 593-W, *Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers*.

## Estates

### 83. Does the law require withholding on sales by estates?

Yes. However, an estate is exempt from withholding if the executor certifies that the decedent was a California resident at the time of death.

**Note:** This exemption only applies if the estate is selling the property. If a beneficiary, who inherited the property, is selling it, withholding is required.

Even if an estate is exempt from withholding on the sale of property, it must withhold on distributions of California source income to nonresident beneficiaries. Get FTB Pub. 1023, *Nonresident Withholding – Independent Contractor Rent & Royalty Guidelines*, for more information.

## Insurance Companies

### 84. Does the Franchise Tax Board require withholding when an insurance company is the seller?

No. Insurance companies are not subject to withholding because they do not pay income taxes. Insurance companies pay a gross premium tax to the California Department of Insurance instead of income or franchise tax.

## Charitable Remainder Trusts

### 85. Does the Franchise Tax Board require withholding when a charitable remainder trust is the seller?

Withholding is not required when the seller certifies on Form 593-W that it is a charitable remainder trust.

## Waivers and Reduced Withholding

### 86. In what situations will the Franchise Tax Board allow waivers or reduced withholding?

The FTB evaluates waiver requests on a case-by-case basis. Generally, FTB grants waivers or reduced withholding when any of the following occur:

- There is little or no gain on the transaction.
- The transaction involves a like-kind exchange as defined under IRC Section 1031.
- The seller will report the sale on the installment sale basis.
- The transfer is the result of an involuntary conversion as defined under IRC Section 1033 and the transferor intends to replace it with qualified property.



- The transaction involves multiple sellers and some, but not all, are subject to withholding.
- The transaction involves property the seller recently acquired by inheritance or through an estate distribution.

Note: Even if the Franchise Tax Board grants a full waiver, the seller may still owe California taxes and have a requirement to file a California tax return.

#### **87. Under what circumstances should sellers request a waiver or reduced withholding?**

The seller should only request a waiver or reduced withholding when they believe the estimated California tax due from the sale is substantially less than the statutory withholding amount. For example:

Selling Price	\$250,000	Gain on Sale	\$10,000
Withholding Rate	<u>x 3<sup>1</sup>/<sub>3</sub>%</u>	CA Tax Rate*	<u>x 8.84%</u>
Statutory Amt.	\$ 8,333	Est. Tax Liability	\$ 884

In this situation, the seller would receive an authorization to reduce the required withholding to \$884.

\* The maximum California tax rate (currently, 8.84 percent for corporations and 9.3 percent for fiduciaries) should be used in computing the estimated tax liability.

#### **88. What form should sellers use to request a waiver or reduced withholding?**

Sellers should fully complete Part III of Form 593-W, *Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers*, and attach all documentation listed in the instructions to support the request.

**Note:** Failure to include the required documentation can delay the determination or cause denial of the request.

#### **89. When should sellers request waivers?**

Sellers must request waivers before the close of escrow. However, sellers should request a waiver as soon as possible upon entering escrow to receive a determination prior to the close of escrow.

#### **90. Can sellers send the waiver request via fax?**

Yes. Sellers may fax the completed waiver request to the Withholding Services and Compliance Section at the Franchise Tax Board. The fax number is (916) 845-9512. If a request is sent via fax, the requestor **SHOULD NOT** mail the original. Requests sent via fax should also include all the required supporting documentation.

#### **91. How long does it take the Franchise Tax Board to issue a determination on a request for waiver or reduced withholding?**

In most cases, FTB issues the determination within 21 business days. Sellers can reduce the processing time by ensuring that all necessary documentation is included with Form 593-W. For routine requests that include all supporting documentation, FTB generally issues the determination within one week of receiving the request.

FTB will fax a copy of the determination letter to the escrow person and mail a copy to the seller.

#### **92. What happens if the seller has not received Franchise Tax Board's response to the waiver request by the time escrow closes?**

If the seller has not received a response from the Franchise Tax Board at the time title transfers, the parties to the transaction may direct the real estate escrow person to hold 3<sup>1</sup>/<sub>3</sub> percent of the total sales price in trust for 45 days. At the end of the 45 days, the escrow person must send the amount withheld to FTB unless FTB has authorized a waiver or reduced withholding.

However, if FTB has not responded to the request at the close of escrow or the 45-day deadline is near, the escrow company should call FTB at (888) 792-4900 to check on the status of the request before remitting funds.

### **IRC Section 1031 Exchanges**

#### **93. Does the law require withholding when the sale is part of a like-kind exchange as defined under IRC Section 1031?**

Yes. However, the seller may apply for a waiver using Form 593-W.

- If the transaction will qualify as a simultaneous like-kind exchange, the withholding agent must withhold 3<sup>1</sup>/<sub>3</sub> percent of any proceeds (boot) the seller receives from the sale.
- If the transaction is expected to qualify as a deferred like-kind exchange, the withholding agent must withhold 3<sup>1</sup>/<sub>3</sub> percent of any proceeds (boot) the seller receives from escrow. The intermediary or accommodator must withhold from any cash or cash equivalent (boot) it distributes to the seller.

If the exchange does not occur or does not qualify for nonrecognition treatment under IRC Section 1031, the intermediary or accommodator must withhold 3<sup>1</sup>/<sub>3</sub> percent of the total sales price.

#### **94. Is there a minimum amount of boot (cash or cash equivalent) the seller must receive before the law requires withholding on the boot?**

There is no minimum boot amount that the seller must receive before the law requires withholding on the boot.

### **Installment Sales**

#### **95. Must the withholding agent withhold the full 3<sup>1</sup>/<sub>3</sub> percent of the total sales price on installment sales?**

Yes. However, the seller may request a waiver or reduced withholding.

### **Involuntary Conversions**

#### **96. Does the law require withholding when the sale is the result of an involuntary transfer such as a condemnation?**

Yes. The law requires withholding on the total sales price. However, the seller may request a waiver if the transfer is a result of an involuntary transfer as defined under IRC Section 1033 **and** the seller

intends to replace the property with qualified property.

**97. What is an “involuntary conversion”?**

An involuntary conversion occurs when property is destroyed, condemned, or disposed of under the threat of condemnation and other property or money is received in payment. For example, the government informs the seller that it intends to acquire the seller's property for public use.

To qualify for a waiver, the seller must also intend to replace the property with qualified property. In general, the replacement property must be similar or related in service or use to the converted property. Get IRS Publication 544, *Sales and Other Dispositions of Assets*, for information about the replacement period and qualifying replacement property.

**Sales by Relocation Companies**

**98. What are the withholding rules when a relocation company sells the property?**

Relocation companies are subject to the same rules as other non-individuals. Examples are:

1. A relocation company resells the property to a third party.
  - There is no withholding on the sale if the relocation company meets an exemption.
  - If the relocation company does not meet an exemption, withholding is required unless a waiver is obtained.
2. An employer gives a relocation company power of attorney to act on its behalf in the resale of property to a third party.
  - No withholding is required on the sale if the employer has a permanent place of business in California. The employer can use Form 593-W to certify this fact.
  - If the employer does not have a permanent place of business in California, withholding is required unless a waiver is obtained.
  - The relocation company is not subject to real estate withholding because it is only acting as an agent for the seller.

**Short Sales/Cash-Poor Transactions**

**99. Does the law require withholding in a cash-poor transaction?**

Yes. The fact that a transaction is cash-poor is neither an exemption to withholding nor a reason for the Franchise Tax Board to grant a waiver.

If the transaction involves a situation where the Franchise Tax Board would normally allow a waiver or reduced withholding, the seller should submit the request on California Form 593-W, *Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers*.

If FTB does not grant a waiver or the funds in escrow will not cover an authorized reduced withholding, the parties must arrange to pay the withholding.

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## Part V. Reporting and Remitting Withholding

### 100. What forms must the withholding agent use to report and remit withholding?

The withholding agent must use California Form 593, *Real Estate Withholding Remittance Statement*, and Form 593-B, *Real Estate Withholding Tax Statement*, to report and remit withholding. Send Copy A of Form 593-B to the Franchise Tax Board with the payment. Give Copies B and C to the sellers. The withholding agent MUST provide the sellers with their copies to attach to their California tax returns to claim the credit for the amount withheld. The withholding agent retains Copy D.

### 101. When sellers are husband and wife, how many Forms 593-B should withholding agents file?

Normally, they should file just one Form 593-B for a husband and wife. However, if the husband and wife intend to file separate returns and wish to have the withholding applied to separate accounts, then each spouse should have a separate Form 593-B. Each spouse's Form 593-B should include only the spouse's proportional share of the withholding.

### 102. When there is more than one seller (other than husband and wife), how many Forms 593-B should withholding agents file?

They should file a separate Form 593-B for each seller. Each seller's Form 593-B should include only the seller's proportional share of the withholding.

### 103. What should the withholding agent do if the seller has not returned a completed Form 593-C or Form 593-W by the close of escrow?

The withholding agent should withhold  $3\frac{1}{3}$  percent of the total sales price.

### 104. When should the withholding agent send the withholding on regular sales to the Franchise Tax Board?

The withholding, Form 593, and Copy A of Forms 593-B are due by the 20th day of the month following the month escrow closes. If a non-individual requested a waiver, see question 107.

### 105. When should the withholding on IRC Section 1031 like-kind exchanges be sent to the Franchise Tax Board?

The withholding, Form 593, and Copy A of Form 593-B are due by the 20th day of the month following the month in which the exchange was completed or failed. For simultaneous exchanges, this is the month escrow closed. For deferred exchanges, this is the month the last leg of the exchange was completed. For failed exchanges, this is the month when it was determined that the exchange would not meet the IRC Section 1031 requirements and the proceeds were distributed to the seller.

### 106. When should the withholding on installment payments be sent to the Franchise Tax Board?

Withholding on down payment:

The original Form 593-I, copy of the promissory note, withholding, Form 593, and Copy A of Form 593-B are due by the 20th day of the month following the month escrow closed.

Withholding on subsequent principal payments:

The withholding, Form 593, and Copy A of Form 593-B are due by the 20th day of the month following the month of the installment principal payment.

### 107. When should the withholding agent send the withholding to the Franchise Tax Board if a non-individual seller requested a waiver?

If the FTB allowed reduced withholding or denied the request by the close of escrow, the withholding agent must send the withholding, Form 593, and Copy A of Form 593-B to FTB by the 20th day of the month following the close of escrow.

If the FTB has not made a determination by the time escrow closes, the parties may direct the escrow person to hold funds for the full withholding in trust for 45 days. If at the end of 45 days we have not responded, the escrow person should call us at (888) 792-4900 to check the status before remitting any withholding.

### 108. Where should the withholding agent send amounts withheld?

Amounts withheld, along with Form 593 and Copy A of Forms 593-B, should be sent to:

**FRANCHISE TAX BOARD  
PO BOX 942867  
SACRAMENTO CA 94267-0001**

Do NOT send amounts withheld directly to the Withholding Services and Compliance Section.

### 109. Does the Franchise Tax Board charge interest on late withholding payments?

Yes. Assessing interest on late payments is mandatory. Imposing interest is not a penalty, but compensation for the use of funds. The FTB computes interest from the due date of the withholding payment to the date it was received.

### 110. What is the penalty for not filing a timely and correct Form 593-B with the Franchise Tax Board?

If withholding agents file a correct Form 593-B within 30 days after the due date, the penalty is \$15. If they file a correct Form 593-B more than 30 days after the due date or they never file a correct Form 593-B, the penalty is \$50.

If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of \$100 or 10 percent of the required withholding. The penalty is for each Form 593-B that the withholding agent did not file correctly or timely.



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**111. What is the penalty for not providing a timely and correct Form 593-B to the sellers?**

The penalty for not providing sellers with correct copies of Form 593-B by the due date is \$50. If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of \$100 or 10 percent of the required withholding. The penalty is for each Form 593-B that is not furnished correctly or timely.

**112. What constitutes a correct Form 593-B?**

Form 593-B is correct when all of the following occur:

- All applicable fields are completed.
- The information is correct.
- The correct version of the form is used. The pre-printed year must match the year the transaction occurred. For sales, this is the year escrow closed. For installment payments, this is the year of the installment payment. For exchanges, this is the year the last leg of the exchange was completed or when it was determined that the exchange would not meet the IRC Section 1031 requirements and any cash or cash equivalent was distributed to the seller.

## **Part VI. Where To Get More Information**

**113. Where can I get more information about the withholding requirements?**

To get withholding forms, publications, or to speak to a representative, contact the Franchise Tax Board's Withholding Services and Compliance Section's automated telephone service at (888) 792-4900 (US toll-free) or (916) 845-4900.

Our automated telephone service allows you to access important information seven days a week, 24 hours a day. If the service does not completely answer your questions, you may choose to speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m.

If you have Internet access, you can view, download, and print withholding forms, publications (including additional copies of Pub. 1016), and California tax forms from the Franchise Tax Board's Website **[www.ftb.ca.gov](http://www.ftb.ca.gov)**.

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